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DEPARTMENT OF COMMERCE

International Trade Administration

A-821-807

Ferrovandium and Nitrided Vanadium from the Russian Federation: Negative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

FINAL DETERMINATION

We determine that the importation of vanadium pentoxide from the Russian Federation (Russia) by the Evraz Group,¹ which is toll-converted into ferrovandium in the United States by Bear Metallurgical Corporation (Bear), prior to sale to unaffiliated customers in the United States, does not constitute circumvention of the antidumping duty order on ferrovandium and nitrided vanadium (ferrovandium) from Russia, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: August 6, 2012.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4007, respectively.

¹ The Evraz Group (otherwise referred to as Evraz in this notice) includes OAO Vanady-Tula, East Metals S.A., and East Metals N.A.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2012, the Department of Commerce (the Department) published in the Federal Register its negative preliminary determination that Evraz's imports of vanadium pentoxide from Russia that are toll-converted into ferrovanadium in the United States by Bear are not circumventing the antidumping duty order on ferrovanadium and nitrided vanadium from Russia,² pursuant to section 781(a) of the Act.³

AMG Vanadium Inc. (AMG Vanadium) and Bear submitted case briefs on March 23, 2012. Both of these parties and Evraz submitted rebuttal briefs on March 28, 2012. We held both a public and a closed hearing on May 3, 2012.

Scope of the Antidumping Duty Order

The products subject to this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order.

Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (i.e., more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium,

² See Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 35550 (July 10, 1995).

³ See Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From the Russian Federation, 77 FR 6537, (February 8, 2012) (Preliminary Determination).

such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides. The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.50.40, 8112.40.30.00, and 8112.40.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of the Circumvention Inquiry

The product subject to this anticircumvention inquiry is vanadium pentoxide (V_2O_5) from Russia, which is usually in a granular form and may contain other substances, including silica (SiO_2), manganese, and sulfur, and which is converted into ferrovanadium in the United States. Such merchandise is classifiable under subheading 2825.30.0010 of the HTSUS. This inquiry only covers such products that are imported by the Evraz Group and converted into ferrovanadium in the United States by Bear.

Statutory Provisions Regarding Circumvention

Section 781(a) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting anticircumvention inquiries under section 781(a)(1) of the Act, the Department determines whether (A) merchandise sold in the United States is of the same class or kind as any other merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or

completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise.

With regard to sub-part (C), section 781(a)(2) of the Act specifies that the Department “shall take into account: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States, (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.”

In addition, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103-316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. See id. Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry.

Further, section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of an antidumping duty order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign

country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Summary of Analysis of Statutory Provisions

We considered all of the comments submitted by the interested parties and find, pursuant to section 781(a) of the Act, that circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia is not occurring by reason of imports of vanadium pentoxide from Russia by the Evraz Group that are toll-converted into ferrovanadium by Bear.

As we explained in the Preliminary Determination, in order to make an affirmative determination of circumvention, all the criteria under section 781(a)(1) of the Act must be satisfied. In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as pattern of trade, affiliation, and import volume.

With respect to the four criteria under section 781(a)(1) of the Act, we find that three of the four criteria have been satisfied. Specifically, (A) the merchandise sold in the United States, ferrovanadium, is of the same class or kind as any other merchandise that is the subject of the antidumping duty order on ferrovanadium from Russia; (B) the ferrovanadium sold in the United States is completed in the United States from parts or components (i.e., vanadium pentoxide), produced in Russia; and (D) the value of the Russian-produced vanadium pentoxide used in the production of ferrovanadium in the United States is a significant portion of the total value of the ferrovanadium sold in the United States. However, as discussed in detail in the Preliminary Determination and in the Issues and Decision Memorandum for the Final Negative Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided

Vanadium from the Russian Federation (dated concurrently with this notice) (Decision Memo), based on our analysis of all the relevant factors under section 781(a)(2) of the Act and the record information, we do not find that the remaining criterion at section 781(a)(1)(C) of the Act, the process of assembly or completion in the United States is minor or insignificant, has been satisfied.

Pursuant to section 781(a)(3) of the Act, we also considered the additional factors concerning the pattern of trade, affiliation, and import trends after the initiation of the investigation which resulted in the antidumping duty order on ferrovanadium from Russia. Our analysis of these factors, as discussed in the Preliminary Determination and the Decision Memo, when viewed in conjunction with our analysis of the other statutory criteria under sections 781(a)(1) and (a)(2) of the Act, do not support including vanadium pentoxide in the antidumping duty order.

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and are addressed in the Decision Memo, which is hereby adopted by this notice. The Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic system (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Decision Memo and the electronic version of the Decision Memo are identical in content.

Conclusion

Based on the analysis under section 781(a) of the Act, summarized above and detailed in

the Decision Memo, we determine that circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia is not occurring by reason of Evraz's imports of vanadium pentoxide from Russia that are toll-converted into ferrovanadium by Bear in the United States.

Notice to Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final negative circumvention determination is published in accordance with section 781(a) of the Act and 19 CFR 351.225.

Paul Piquado
Assistant Secretary
for Import Administration

July 30, 2012
Date

APPENDIX

- Comment 1: The Ferrovandium Completion Process in the United States
- Comment 2: The Additional Statutory Factors
- Comment 3: Exclusion of Vanadium Pentoxide from the Scope of the Order
- Comment 4: Economic Impact of the Anticircumvention Inquiry

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